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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

In re:

CHAPTER 7

DANIEL PEREZ,

BANKRUPTCY NO. 17-44735

Debtor.

DANIEL PEREZ,

ADVERSARY NO.

Plaintiff,

vs.

AUTOMAX (a corporation doing business
in Washington),

COMPLAINT FOR ORDER
COMPELLING AUTOMAX TO EITHER
TURN OVER TITLE OR PICK UP 2003
MITSUBISHI GALANT VIN #
4A3AA46G83E092993 AND FOR
ATTORNEYS FEES AND COSTS

Defendant.

COMES NOW the plaintiff, by and through his attorney, Dorothy A. Bartholomew,
and files this Complaint asking the Court to issue an order compelling Automax of Yakima to
either pickup or turn over title to a 2003 Mitsubishi Galant, VIN # 4A3AA46G83E092993,
for attorney fees and costs; and, any further relief as the Court deems necessary or equitable.

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In support thereof, the attorney represents as follows:

I. JURISDICTION AND VENUE

1.1 Plaintiff Daniel Perez is the debtor in the above Chapter 7 proceeding.

1.2 Defendant Automax is a creditor in the above Chapter 7 proceeding.

1.3 This Court has jurisdiction over the subject matter as an adversary proceeding under 28 U.S.C. § 1334, 28 U.S.C. §157(b)(1), and 28 U.S.C. §157(b)(2)(e), as this is a proceeding to compel Automax to either pick or turn over the title to the 2003 Mitsubishi Galant, VIN # 4A3AA46G83E092993. 11 U.S.C. § 542(a).

1.4 The undersigned attorney is satisfied that the proper grounds exist for filing this action.

II. PARTIES

2.1 Plaintiff reasserts paragraph I above.

2.2 The Plaintiff may serve Automax by mailing copies of the Summons and Complaint by certified mail, return receipt requested, to Automax's regular place of business, at the below address:

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Frank Tamez, Owner
Auto Max USA
1701 S 1st Street
Yakima, WA 98901

They may also serve by mailing a copy of the Summons and Complaint by certified
mail, return receipt to Automax at the following addresses:

President/CEO
Automax
Damian Shriver
PO Box 821732
Vancouver, WA 98682-0000

And

President/CEO
Automax
Damian Shriver
12511 NE Fourth Plain Blvd.
Vancouver, WA 98682

Fed. R. Bankr. P. 7004(b)(3); Fed. R. Civ. P. 4(h).

III. FACTS

3.1 On December 27, 2017, Daniel Perez petitioned for relief under Chapter 7 of Title 11
of the United States Bankruptcy Code.

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3.2 Automax is a creditor in the Plaintiff's Chapter 7 case. Automax has a security interest in the plaintiff's 2003 Mitsubishi Galant.

3.3 Plaintiff's Statement of Intention (Form 108) indicated that he would surrender the 2003 Mitsubishi Galant, but Automax has refused to pick it up.

3.5 The plaintiff wishes to dispose of the 2003 Mitsubishi Galant and cannot do so without the title.

3.6 The plaintiff has been incurring storage fees on the vehicle in the amount of \$70.00 per month. (See Exhibit A-Receipts)

3.7 On March 9, 2018, plaintiff's counsel called Automax in Yakima and spoke with a woman named "Lisa". Lisa told debtor's counsel that plaintiff had not paid on the vehicle since 2011. Debtor's counsel let Lisa know that the debtor had filed bankruptcy and either needed the creditor to come and pick up the vehicle or hand over the title.

3.8 On April 4, 2018, plaintiff's counsel spoke with the agent of Automax named "Lisa" to ask her if the creditor would come and pick up the vehicle, or in the alternative, if

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they would prefer to send the plaintiff the title, so he could dispose of the vehicle himself. The attorney disclosed to Automax, that the vehicle no longer was in running condition.

3.9 On April 12, 2018, plaintiff's counsel again called and spoke with "Lisa" who stated that the owner had "been out of town and has not decided what he wants to do yet." Lisa asked plaintiff's counsel to present the options in an email to lindabalderas945@hotmail.com. (See Exhibit B– Email to Automax dated April 12, 2018). Plaintiff's counsel prepared and sent the requested email to the foregoing address.

3.10 On July 10, 2018, plaintiff's counsel asked "Lisa" whether Automax had decided to turn over the title. Counsel reminded Lisa that the vehicle was in storage accruing fees of \$70.00 per month. It was during this same phone call plaintiff's counsel explained that Automax had two options only: either pick up the vehicle, or turn over the title. Absent either, counsel would have to file an adversary to compel some kind of action.

3.11 On July 30, 2018, counsel called Automax and spoke with "Lisa" to ask if she had

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followed up with the owner. She stated that the owner said that he received paperwork but was confused because the paperwork was for a totally different vehicle. Counsel explained that an asset had been recovered and liquidated for the benefit of creditors. Automax had received a notice to file a proof of claim. Counsel advised “Lisa” to have the owner call if he needed further explanation.

3.12 On August 13, 2018, plaintiff’s counsel called Automax and asked to speak directly to the owner. Plaintiff’s counsel was told that the owner was “not available.” Plaintiff’s counsel asked to leave a voice mail requesting a return call.

3.13 To date, the owner has not returned the call.

3.13 As a final resort, plaintiff’s counsel has filed the instant adversary to compel the creditor to either pick up the 2003 Mitsubishi Gallant or to turn over the title to allow the plaintiff to dispose of the property.

3.14 Due to the inaction of the creditor, the plaintiff has been incurring storage fees on the vehicle.

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IV. 11 U.S.C. § 541 (a)(1) and R.C.W. § 60.10.050

4.1 Plaintiff reasserts the facts in paragraph III.

4.2 The commencement of a bankruptcy case creates an estate which consists of all legal and equitable interests of the plaintiff in property as of the commencement of the case. 11 U.S.C. § 541 (a)(1).

4.3 The 2003 Mitsubishi Galant is property of the estate. *See Turner v. DeKalb Bank (In re Turner)*, 209 B.R. 558 (N.D.Ala. 1997).

V. 11 U.S.C. § 542 (a) and 363 (b)

5.1 Plaintiff reasserts the facts contained in paragraph III above.

5.2 Plaintiff reasserts the law contained in paragraph IV above.

5.3 A creditor in possession of property that the trustee may use . . . under section 363 of this title . . . shall deliver to the trustee, and account for, such property or the value of such property, unless the property is of inconsequential value or benefit to the estate. 11 U.S.C. § 542 (a).

5.4 Under 11 U.S.C. § 363(b)(1) the trustee may use property of the estate after notice

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and a hearing. 11 U.S.C. § 363(b)(1).

5.5 And, 11 U.S.C. § 1303 gives a plaintiff the rights and powers of a trustee under section 363(b). 11 U.S.C. § 1303.

PRAYER FOR RELIEF

Plaintiff asks this Court to issue an order compelling Automax to either pick up, or turn over the title to the 2003 Mitsubishi Galant and to award fees and costs incurred in this action.

DATED: August 16, 2018

/s/ Jada R. Wood

Jada R. Wood
Associate Attorney to Dorothy Bartholomew
WSBA No. 51362
Attorney for Daniel Perez